

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X
:
SPECIAL TOUCH HOME CARE :
SERVICES, INC., :
:
Plaintiff, :
:
v. : Case No. 1:20-cv-03051-NGG-RLM
:
UNITED STATES OF AMERICA, :
:
Defendant. :
X

DEFENDANT UNITED STATES' MOTION TO DISMISS

The defendant United States of America moves this Court to dismiss the complaint of the plaintiff Special Touch Home Care Services, Inc., pursuant to Fed.R.Civ.P. 12(h)(3) for lack of subject-matter jurisdiction and based upon the sovereign immunity of the United States. The complaint against the United States is barred by sovereign immunity because the plaintiff did not duly file a claim for refund prior to the commencement of this refund action, as required by 26 U.S.C. § 7422. A brief in support of the United States' motion is attached.

DAVID A. HUBBERT
Acting Assistant Attorney General
Tax Division, U.S. Department of Justice

/s/ *Thelma A. Lizama*
THELMA A. LIZAMA
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55
Washington, D.C. 20044
202-616-3339 (v)
202-514-5238(f)

CERTIFICATE OF SERVICE

I certify that service of the foregoing Defendant United States' Motion to Dismiss has this 12th day of April, 2021, been made upon counsel for plaintiff Special Touch Home Care Services, Inc. via email.

/s/ Thelma A. Lizama
THELMA A. LIZAMA
Trial Attorney, Tax Division